

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

MANUEL GARCIA-TORRES

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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Civil No. 05-1158(SEC)

OPINION AND ORDER

Before the Court is Petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (**Docket #1**). On March 14, 2005 the Court referred this case to Magistrate-Judge Justo Arenas for a Report and Recommendation (**Docket # 8**). On October 4, 2005 Magistrate Arenas issued his report, recommending that the petition be denied and the case be dismissed with prejudice (**Docket # 11**). Petitioner has not filed any objections to the Magistrate's report and the time allotted for doing so has expired. Therefore, the Court will **APPROVE** and **ADOPT** the Magistrate's Report and Recommendation, **DENY** Petitioner's motion, and **DISMISS WITH PREJUDICE** the above captioned action.

**Standard of Review**

The scope of review of a Magistrate's recommendation is set forth in 28 U.S.C. § 636(b)(1)(c). This section provides that "[a] judge of the [district] court shall make a de novo determination of those portions of the report or specified findings or recommendations to which [an] objection is made." Id. The Court can "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate," however, if the affected party fails to timely file objections, "the district court can assume that they have agreed to the magistrate's recommendation." Alamo-Rodríguez v. Pfizer Pharm., Inc., 286 F. Supp. 2d 144, 146 (D.P.R. 2003) (quoting Templeman v. Chris Craft Corp., 770 F.2d 245, 247 (1<sup>st</sup> Cir. 1985)). Thus, no review is required of those issues to which objections are not timely raised.

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Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986); Borden v. Sec'y of Health & Human Servs., 836 F.2d 4, 6 (1<sup>st</sup> Cir. 1987). In fact, a party who fails to file any objections to the Magistrate Judge's Report and Recommendation within ten days of its filing waives his or her right to appeal from the district court's order. Henley Drilling Co. v. McGee, 36 F.3d 143, 150-51 (1<sup>st</sup> Cir. 1994); United States v. Valencia-Copete, 792 F.2d 4, 5 (1<sup>st</sup> Cir. 1986); Davet v. Maccarone, 973 F.2d 22, 30-31 (1<sup>st</sup> Cir. 1992) (“[f]ailure to raise objections to the Report and Recommendation waives that party's right to review in the district court and those claims not preserved by such objection are precluded on appeal”).

### **Analysis and Conclusion**

Neither party has objected to the Magistrate Judge's Report and Recommendation, thus we are not required by law to review it. However, upon review, we find no fault with Magistrate Judge Arenas' assessment and thus **APPROVE** and **ADOPT** his Report and Recommendation as our own. Consequently, Petitioner's motion is **DENIED** and the above captioned action will be **DISMISSED WITH PREJUDICE**. Judgment shall be entered accordingly.

### **SO ORDERED.**

In San Juan, Puerto Rico, this 25<sup>th</sup> day of October, 2005.

S/ *Salvador E. Casellas*  
SALVADOR E. CASELLAS  
U.S. Senior District Judge